

**ORDINANCE NO. 2010.09**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 16 OF THE TEMPE CITY CODE, RELATING TO LICENSE, PRIVILEGE AND EXCISE TAXES BY AMENDING SECTIONS 16-260, 16-415, 16-416, 16-417, 16-450, AND 16-570; AMENDING REGULATIONS 16-350.3 AND 16-415.3; AND ESTABLISHING EFFECTIVE DATES.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**Section 1.** That Section 16-260(c) of the Tax Code of the City of Tempe is amended as to the following definitions:

**Sec. 16-260. Exclusion of fees and taxes from gross income; limitations.**

(c) There shall be excluded from gross income the following fees, taxes, and lieu taxes, but only to the extent that such taxes or fees or both have been separately itemized and collected from the purchaser by the vendor, actually remitted to the proper registering, licensing, and taxing authorities, and the provisions of Article III, regarding recordkeeping, are met:

- (1) Emergency telecommunication services excise tax imposed pursuant to A.R.S. Section 42-5252. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls;
- (2) The telecommunication devices for the deaf and the severely hearing and speech impaired excise tax imposed pursuant to A.R.S. Section 42-5252;
- (3) Federal excise taxes on communications services as imposed by 26 U.S.C. Section 4251;
- (4) Car rental surcharge imposed pursuant to A.R.S. Section 48-4234;
- (5) Federal excise taxes on passenger vehicles as imposed by 26 U.S.C. Section 4001(.01);
- (6) Waste tire disposal fees, imposed pursuant to A.R.S. Section 44-1302; ~~lead acid battery fees, imposed pursuant to A.R.S. Section 44-1323; and used oil fees imposed pursuant to A.R.S. Section 49-814(B), (C).~~

**Section 2.** That Section 16-415(b)(10) of the Tax Code of the City of Tempe is amended to read:

**Sec. 16-415. Construction contracting—Construction contractors.**

(b) *Deductions and exemptions:*

....

- (10) ~~Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.~~ ANY AMOUNT ATTRIBUTABLE TO DEVELOPMENT FEES THAT ARE INCURRED IN RELATION TO THE CONSTRUCTION, DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY AND PAID BY THE TAXPAYER AS DEFINED IN THE MODEL CITY TAX CODE OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER. FOR THE PURPOSES OF THIS PARAGRAPH:
- (A) THE ATTRIBUTABLE AMOUNT SHALL NOT EXCEED THE VALUE OF THE DEVELOPMENT FEES ACTUALLY IMPOSED.
- (B) THE ATTRIBUTABLE AMOUNT IS EQUAL TO THE TOTAL AMOUNT OF DEVELOPMENT FEES PAID BY THE TAXPAYER OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER AND THE TOTAL DEVELOPMENT FEES CREDITED IN EXCHANGE FOR THE CONSTRUCTION OF, CONTRIBUTION TO OR DEDICATION OF REAL PROPERTY FOR PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES NECESSARY TO THE DEVELOPMENT. THE REAL PROPERTY MUST BE THE SUBJECT OF THE DEVELOPMENT FEES.
- (C) "DEVELOPMENT FEES" MEANS FEES IMPOSED TO OFFSET CAPITAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES TO A DEVELOPMENT AND AUTHORIZED PURSUANT TO SECTION 9-463.05, SECTION 11-1102 OR TITLE 48 REGARDLESS OF THE JURISDICTION TO WHICH THE FEES ARE PAID.

**Section 3.** That Section 16-416(c)(1) of the Tax Code of the City of Tempe is amended to read:

**Sec. 16-416. Construction contracting—Speculative builders.**

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions relating to exemptions, deductions and tax credits:

(1) *Exemptions.*

....

(E) ~~Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.~~ ANY AMOUNT ATTRIBUTABLE TO DEVELOPMENT FEES THAT ARE INCURRED IN RELATION TO THE CONSTRUCTION, DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY AND PAID BY THE TAXPAYER AS DEFINED IN THE MODEL CITY TAX CODE OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER SHALL BE EXEMPT FROM THE TAX IMPOSED UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH:

- (i) THE ATTRIBUTABLE AMOUNT SHALL NOT EXCEED THE VALUE OF THE DEVELOPMENT FEES ACTUALLY IMPOSED.
- (ii) THE ATTRIBUTABLE AMOUNT IS EQUAL TO THE TOTAL AMOUNT OF DEVELOPMENT FEES PAID BY THE TAXPAYER OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER AND THE TOTAL DEVELOPMENT FEES CREDITED IN EXCHANGE FOR THE CONSTRUCTION OF, CONTRIBUTION TO OR DEDICATION OF REAL PROPERTY FOR PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES NECESSARY TO THE DEVELOPMENT. THE REAL PROPERTY MUST BE THE SUBJECT OF THE DEVELOPMENT FEES.
- (iii) "DEVELOPMENT FEES" MEANS FEES IMPOSED TO OFFSET CAPITAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES TO A DEVELOPMENT AND AUTHORIZED PURSUANT TO SECTION 9-463.05, SECTION 11-1102 OR TITLE 48 REGARDLESS OF THE JURISDICTION TO WHICH THE FEES ARE PAID.

**Section 4.** That Section 16-417(c)(1) of the Tax Code of the City of Tempe is amended to read:

**Sec. 16-417. Construction contracting—Owner-builders who are not speculative builders.**

(c) The tax liability of this Section is subject to the following provisions relating to exemptions, deductions and tax credits:

(1) *Exemptions.*

....

- (E) ~~Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.~~ ANY AMOUNT ATTRIBUTABLE TO DEVELOPMENT FEES THAT ARE INCURRED IN RELATION TO THE CONSTRUCTION, DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY AND PAID BY THE TAXPAYER AS DEFINED IN THE MODEL CITY TAX CODE OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER SHALL BE EXEMPT FROM THE TAX IMPOSED UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH:
- (i) THE ATTRIBUTABLE AMOUNT SHALL NOT EXCEED THE VALUE OF THE DEVELOPMENT FEES ACTUALLY IMPOSED.
  - (ii) THE ATTRIBUTABLE AMOUNT IS EQUAL TO THE TOTAL AMOUNT OF DEVELOPMENT FEES PAID BY THE TAXPAYER OR BY A CONTRACTOR PROVIDING SERVICES TO THE TAXPAYER AND THE TOTAL DEVELOPMENT FEES CREDITED IN EXCHANGE FOR THE CONSTRUCTION OF, CONTRIBUTION TO OR DEDICATION OF REAL PROPERTY FOR PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES NECESSARY TO THE DEVELOPMENT. THE REAL PROPERTY MUST BE THE SUBJECT OF THE DEVELOPMENT FEES.
  - (iii) "DEVELOPMENT FEES" MEANS FEES IMPOSED TO OFFSET CAPITAL COSTS OF PROVIDING PUBLIC INFRASTRUCTURE, PUBLIC SAFETY OR OTHER PUBLIC SERVICES TO A DEVELOPMENT AND AUTHORIZED PURSUANT TO SECTION 9-463.05, SECTION 11-1102 OR TITLE 48 REGARDLESS OF THE JURISDICTION TO WHICH THE FEES ARE PAID.

**Section 5.** That Section 16-450(c) of the Tax Code of the City of Tempe is amended to read:

**Sec. 16-450. Rental, leasing, and licensing for use of tangible personal property.**

(c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

- (1) Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
- (2) Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
- (3) Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 16-410, or to a radio station, television station, or subscription television system.
- (4) Rental, leasing, or licensing for use of the following:
  - (A) Prosthetics.
  - (B) Income-producing capital equipment.
  - (C) Mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

- (5) Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (6) Separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.

- (7) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) Reserved.
- (9) Rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) Rental, leasing or licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (11) RENTAL, LEASING, AND LICENSING FOR USE OF SOLAR ENERGY DEVICES, FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008. THE LESSOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY RETAILER. BY REGISTERING, THE LESSOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO LEASES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND CITY, AS APPLICABLE, FOR EXAMINATION.

**Section 6.** That Section 16-570(b)(2) of the Tax Code of the City of Tempe is amended to read:

**Sec. 16-570. Administrative review; petition for hearing or for redetermination; finality of order.**

(b) *Administrative review.*

....

- (2) *Extension to file a petition.* In all cases, the taxpayer may request ~~only one (1)~~ AN extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay ~~and time of delay requested,~~ and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow ~~such~~ A FORTY-FIVE (45) DAY extension to file a petition; when such written request has been properly and timely made by the taxpayer, ~~but such extension shall not exceed forty five (45) days beyond the time provided for originally filing a petition.~~ THE TAX COLLECTOR MAY GRANT AN ADDITIONAL EXTENSION AND MAY

DETERMINE THE CORRESPONDING TIME OF ANY SUCH EXTENSION AT HIS SOLE DISCRETION.

**Section 7.** That Regulation Section 16-350.3 of the Tax Code of the City of Tempe is amended to read:

**Reg. 16-350.3. Recordkeeping: out-of-City and out-of-State sales.**

(a) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.

(b) Out-of-State Sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:

- (1) Documentation of location of the buyer at the time of order placement; and
- ~~(2) Documentation of residency of the buyer, determined in the manner one determines if a person “resides within the City”; and~~
- ~~(3)~~ (2) Shipping, delivery, or freight documents showing where the buyer took delivery; and
- ~~(4)~~ (3) Documentation of intended location of use or storage of the tangible personal property sold to such buyer.

**Section 8.** That Regulation Section 16-415.3 of the Tax Code of the City of Tempe is amended to read:

**REG. 16-415.3. CONSTRUCTION CONTRACTING; TAX RATE EFFECTIVE DATE**

(a) IN THE EVENT OF A TAX RATE CHANGE, THE RATE IMPOSED ON GROSS INCOME FROM CONSTRUCTION CONTRACTING SHALL BE COMPUTED BASED UPON THE RATE IN EFFECT WHEN THE CONTRACT WAS EXECUTED, SUBJECT TO THE “ENACTMENT DATE” AS DEFINED IN THIS SECTION. GROSS INCOME FROM A CONTRACT EXECUTED PRIOR TO THE ENACTMENT DATE SHALL NOT BE SUBJECT TO THE TAX RATE CHANGE, PROVIDED THE CONTRACT CONTAINS NO PROVISION THAT ENTITLES THE CONSTRUCTION CONTRACTOR TO RECOVER THE AMOUNT OF THE TAX.

(b) IN THE EVENT OF A RATE INCREASE, IN ORDER TO QUALIFY FOR THE LOWER RATE, THE CONSTRUCTION CONTRACTOR SHALL, UPON REQUEST, PROVIDE SUFFICIENT DOCUMENTATION, IN A MANNER AND FORM PRESCRIBED BY THE TAX COLLECTOR, TO VERIFY THAT A CONTRACT WAS ENTERED INTO BEFORE THE ENACTMENT DATE.

(c) FOR PURPOSES OF THIS SECTION, "ENACTMENT DATE" SHALL BE:

- (1) IN THE EVENT AN ELECTION IS HELD, THE DATE OF THE ELECTION,
- (2) IN THE EVENT NO ELECTION IS HELD, THE DATE OF FINAL ADOPTION BY THE MAYOR AND COUNCIL.
- (3) NOTWITHSTANDING THE ABOVE, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE CITY FROM ESTABLISHING A LATER ENACTMENT DATE.

**Section 9.** The provisions of Sections 1, 2, 3, 4 and 8 of this ordinance shall be effective from and after September 1, 2006.

**Section 10.** The provisions of Sections 5, 6 and 7 of this ordinance shall be effective from and after July 1, 2008.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney